IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13420 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAGENDRA S AWASIA - Petitioner(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION & 1 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/10/2005

ORAL JUDGMENT

1. In the present petition, a retired employee of respondent-State Road Transport Corporation has prayed for a direction to the respondents to release the

gratuity payable to the petitioner which has been, according to the petitioner, withheld illegally by the respondents.

2. It is not in dispute that the petitioner retired on superannuation w.e.f. 30th November, 2003. It is also not in dispute that his gratuity amount is not released by the respondents. This Court had issued rule returnable on 14th July, 2005 by an order dated 14/6/2005. Learned advocate Mr. Munshaw appeared for the respondents. Respondents have filed affidavit in which it is stated that gratuity amount of Rs. 2,42,626/- otherwise payable to the petitioner has not been released in view of the provisions of Section 4(6)(b) of the Payment of Gratuity Act since two criminal cases of mis-appropriation are pending against the petitioner.

3. In view of the fact that there is no factual dispute and in particular there is no dispute about the amount of gratuity which the petitioner would normally have received, and in view of the fact that this Court has already issued rule and the petition is being finally heard, I find it inappropriate to relegate the petitioner to the alternative remedy under the Payment of Gratuity

Act. In this view of the matter, in special facts of the present case, the petition claiming gratuity is being entertained though alternative remedy is available.

4. The only ground raised by the respondents to resist the directions prayed for by the petitioner is that two criminal cases are pending against him which pertain to mis-appropriation of funds belonging to the respondent.

5. Sub-section (1) of Section 4 of the Payment of Gratuity Act provides for payment of gratuity to an employee on termination of his employment after rendering continuous service for not less than five years. When such termination of services is on account of his superannuation or his retirement or resignation or his death or disablement due to accident or decease. Sub-section (2) of Section 4 provides inter alia that for every completed year of service or part thereof in access of six months the employer shall pay gratuity to an employee at the rate of 15 day's wages based on the rate of wages last drawn by the employee concerned.

5.1 Sub-section (6) of Section 4 of the Payment of Gratuity Act provides for forfeiture of gratuity payable

to an employee under certain circumstances. Sub Section (6) of Section 4 of Gratuity Act reads as follows:

> (6) Notwithstanding anything contained in sub-section (1),-
> (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
> (b) the gratuity payable to an employee [may be wholly or partially forfeited]-
> (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

5.2 From the above quoted provisions of Section 4(6) of the Payment of Gratuity Act, it can be seen that gratuity of an employee can be forfeited when his services have been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer and in such a case to the extent of damage or loss so caused. Gratuity can also be forfeited fully or partially if services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or having terminated for any act which constitutes an offence involving moral turpitude, provided that such

offence is committed in the course of employment.

5.3 In the present case admittedly the petitioner was allowed to retire on superannuation and his services were never terminated. None of the eventualities envisaged in Sub-section (6) of Section 4 of the Payment of Gratuity Act are, therefore, present in this case. The respondents are not justified in withholding the gratuity payable to the petitioner. Respondents are directed to release the same and pay to the petitioner within a period of four weeks from today. With these directions, petition is allowed. Rule is made absolute. No order as to costs.

(Akil Kureshi, J.)

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